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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1990 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ALPHA AND OMEGA MEDICALS (INDIA) LTD

Versus

DIRECTOR

Appearance:

M/S THAKKAR ASSOC. for Petitioner
NANAVATI & NANAVATI for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 08/12/98

ORAL JUDGEMENT

1. Rule. Mr.D.G.Shukla with Mr.S.I.Nanavaty,
Ld.Advocate for respondent No.1 and Mr.P.G.Desai, Learned
Pleader for respondent No.2 waive service of rule. Heard
the learned advocates for parties and with the consent of
learned advocates for the parties matter is taken up for

finally hearing today.

2. The petitioner by way of this petition challenged the action of the respondents in deciding and awarding the contract to other parties even though the other parties have offered higher tender rates and ignoring the tender of the petitioner even though the tender price offered by the petitioner is the lowest and the instruments also are of better quality and specifications. It is also the contention of the petitioner that more than a year had elapsed since the date of inviting tender and technology has undergone major change and that the instruments being purchased are outdated, and finally the petitioner has not been called for negotiations while inviting others for negotiations even though the petitioner had offered the lowest price. Even though the petitioner has prayed that the respondents be directed to consider the tender of the petitioner for the award of the contract on merits in respect of the Multiparameter Monitoring Modular System with Central Station in pursuance of tender notices, dtd.4.3.97 and 18.3.97 and to direct to award the contract to the petitioner in the interest of justice and equity, however, when the matter is finally heard today, Mr.Kavina for M/s Thakkar Associates appearing for the petitioner has stated that he does not press the aforesaid relief, and he restricted his arguments to the relief prayed in the petition alternatively, i.e. to direct the respondents to retender the contract in respect of the tender for Multiparamater Monitoring Modular System with Central Station in pursuance of the tender notices, dated 4.3.97 and 18.3.97 after cancelling the tender notices dated 4.3.97 and 18.3.97 and after quashing the decision for awarding the contract to any other person in the interest of justice and equity.

3. The Director of Institute of Cardiology & Research Centre, Civil Hospital, Ahmedabad-the respondent No.1 herein, by public advertisement, dtd.4.3.97 invited tenders for Multiparameters Modular Monitoring System with Central Station by giving date of submission of tenders, date of opening of tenders etc. However, the said date was extended thereafter with which we are not concerned. It appears that in all 7 bidders, including the petitioner, submitted 7 tenders. It appears that the Technical Committee, consisting of (i) Dr.D.G.Yagnik, Professor of Cardiology from V.S.Hospital, Ahmedabad, (ii) Dr.Sukumar Mehta, Professor, Cardiothoracic Surgery from respondent No.1 Institute, (iii) Dr.Varsha Shah,

Associate Professor, Cardiothoracic Surgery from respondent No.1 Institute and (iv) Dr.Sameer Dani, Assistant Professor, Cardiology from respondent No.1 Institute prepared the Technical Scrutiny Report-Group 1-Multiparameter Modular Monitoring System, dated 9.12.1997. It further appears that thereafter Purchase Committee consisting of 12 officials including the Special Invitees/Experts in the meeting dated 24.2.98 scrutinised the comparative statement and report of the technical committee and called two parties, i.e. whose offers were technically acceptable, for negotiations

4. This court while issuing notice to respondents on 17.3.98 also passed order directing the respondents to maintain statusquo as on the date which has been continued till date.

5. Dr.Sameer I.Dani, on behalf of respondent No.1, has filed affidavit-in-reply dealing with each and every contention of the petitioner.

6. Learned Advocate-Mr.Kavina for M/s Thakkar Associates appearing for the petitioner submitted that even though the other parties have offered higher tender rates than the petitioner, and even though the instruments of the petitioner are of better quality and specifications, the decision to accept the tenders of other bidders is arbitrary, without application of mind and violative of Article 14 of the Constitution of India. Mr.Kavina has further submitted that more than one year had elapsed since the date of inviting tender and the technology has undergone a major change and therefore the instruments being purchased are outdated. In my opinion, none of the contentions has any merit and deserves to be rejected. From the affidavit-in-reply it appears that the parties had offered price in US Dollars for Group 1 Multiparameter Modular Monitoring System(hereinafter to be referred to as "the instrument in question"). It appears from the record that the offer given by the petitioner was later reduced by the petitioner. However, the respondents, instead of giving importance to the price had preferred the quality and specifications of the instrument in question. Mere perusal of the report of the Technical Committee suggests that the committee had considered the plus points of offers of all the bidders. Not only that the Committee has also considered the qualitative and quantitative deviation from the tender specifications and after considering the same ultimately found that the system offered by the petitioner is not technically acceptable. Not only that the Purchase Committee consisting of 12 highly placed officials of the

institution having experts in the category of Additional Chief Secretary, H & W Department, Gandhinagar, Chairman-U.N.Mehta Institute of Cardiology and Research Centre, Ahmedabad, Additional Director, Medical Education & Research, Gandhinagar, Secretary(Expenditure), Finance Department, Gandhinagar, Director, U.N.Mehta Institute of Cardiology and Research Centre, Ahmedabad, Representative of U.N.Mehta Charitable Trust, Ahmedabad, Managing Director, GMDC, Ahmedabad, Financial Advisor, Health & F.W.Department, Gujarat State, Dy.Secretary, Health & F.W. Department, Medical Education & Research, G.S, Dr.V.A.Shah, Associate Professor, Cardiothoracic Surgery of respondent No.1 Institute, Dr.Sameer Dani, Assistant Professor, Cardiology of respondent No.1 Institute, Dr.S.B.Dalal, Technical Expert and Dr.R.K.Patel, Cardiologist after considering the comparative statement and report of the Technical Committee two parties whose offers were technically acceptable out of six parties and therefore those two parties were called for negotiations. Since the system offered by the petitioner was not technically acceptable there was no question of calling him for negotiations and therefore the petitioner is not entitled to make any grievance that he was not called for negotiations.

7. Mr.Kavina has also invited my attention to the judgment, dated 30.3.98 delivered by this court in SCA No.1638/98 (Coram:M.S.Shah,J). Having gone through the directions given in para 7 & 8 of the judgment, I am of the view that it is not necessary to give similar directions as the facts of the present case do not warrant similar directions and in any case that the Technical Committee after considering the pros and cons of the instrument in question which is highly sensitive and technical in nature it is just not possible for this court to sit in appeal over the said decision of the Technical Committee. In any case when once the decision is taken by the Technical Committee that the system offered by the petitioner is technically not acceptable and for that reason if the petitioner is not called for negotiations, I am of the view that the respondents are justified in not calling the petitioner for negotiations. The grievance of the petitioner that due to lapse of time from the date of inviting tenders the technology has undergone major change and the instruments being purchased are outdated has also no merit in view of the fact that the same logic can be applied to the petitioner also. Mr.Kavina made grievance that the Technical Committee consisting of 4 members only Dr.Mehta and Dr.Yagnik were present and have opportunity to see the system of demonstration by the representative of the

petitioner and therefore the report of the Technical Committee is not worth relying. Mr.S.I.Nanavaty, Ld.advocate appearing for respondent No.1 has stated at Bar that all members of the Technical Committee except Dr.Dalal were present and therefore the grievance of the petitioner is not well-founded. Mr.Nanavaty has also made submission at the Bar that the successful bidder in whose favour the contract is to be awarded has also agreed to reduce the price of the instrument in question to an extent of Rs.25 to 30 lacs and to supply the parts worth Rs.8 to 10 lacs. Mr.Nanavaty submits that necessary affidavit in that connection shall be filed latest before 9.12.1998.

8. In view of this no question to consider the prayer directing the authorities to re-tender the contract for the instrument in question arises.

9. In view of the above discussion, I see no reason to interfere in this petition, and therefore, the petition is rejected. Interim relief granted earlier stands vacated. Rule is discharged.

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